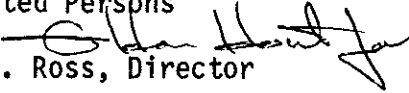


Department of Land Conservation and Development

1175 COURT STREET N.E., SALEM, OREGON 97310-0590 PHONE (503) 378-4926

M E M O R A N D U M

December 3, 1985

TO: Interested Persons
FROM: James D. Ross, Director 
SUBJECT: NEW ADMINISTRATIVE RULES REGARDING COMMITTED EXCEPTIONS AND
REVIEW PROCEDURES FOR ACKNOWLEDGMENT ORDERS REMANDED BY THE
COURTS

On October 24, 1985, the Land Conservation and Development Commission amended two of its administrative rules. These amendments involved the following:

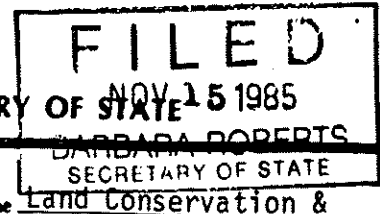
- (1) OAR 660-03-050: Establishes procedures and timelines for the review of acknowledgment orders remanded or reversed by the Oregon Supreme Court or Court of Appeals.
- (2) OAR 660-04-028: Clarifies the intent of the committed exceptions process and establishes new requirements regarding the mapping of such exceptions.

The new mapping requirement applies to all committed exceptions adopted or amended as required by a Continuance Order dated after November 15, 1985 and those committed exceptions adopted or amended by a jurisdiction with an acknowledged comprehensive plan and land use regulations after November 15, 1985; the effective date of the rule amendments (OAR 660-04-028(8)).

If you have any questions about these rule amendments, please contact Ronald Eber at 378-5454.

JFR:sp
6630DRE/3B

CERTIFICATE AND ORDER
for
FILING ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE



I HEREBY CERTIFY that the attached copy is a true, full and correct copy of rule(s) adopted by the Development Commission on October 24, 1985 to become effective upon filing
(Agency) (Date)

The within matter having come before the Land Conservation & Development Commission after

all procedures having been in the required form and conducted in accordance with applicable statutes and rules and being fully advised in the premises:

Notice of Intended Action published in OAR Bulletin: NO ☐ YES ☒ Date Published: August 15, 1985

NOW THEREFORE, IT IS HEREBY ORDERED THAT the following action be taken:
(List Rule Number(s) or Rule Title(s) on Appropriate Lines Below)

PERM. ☒ or TEMP. ☐

Adopted:
(New Rules)

Amended:
(Existing Rules)

OAR 660-04-028

Suspended:
(Temporary Only)

Repealed:
(Existing Rules)

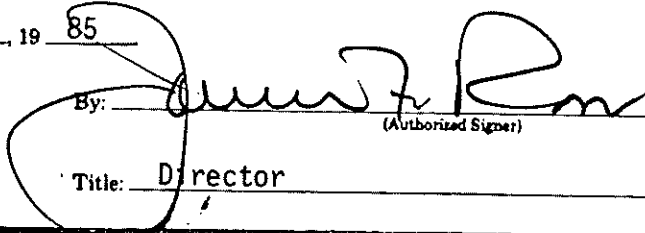
RECEIVED

NOV 15 1985

LEGISLATIVE COUNSEL'S
OFFICE

as Administrative Rules of the Land Conservation & Development Commission
(Agency)

DATED this 7th day of November, 19 85

By: 

(Authorized Signer)

Title: Director

Statutory Authority: ORS Chapters 197 and 183 particularly 197.040 and 197.732

Subject Matter: Clarifies the intent of the committed exceptions process and establishes new requirements regarding the mapping of such exceptions.

Statement of Need Attached: ☒

Fiscal Impact Attached: ☒

For Further Information Contact: Ronald Eber, Legal Policy Coordinator

Phone: 378-5454

AMENDMENTS TO
EXCEPTIONS PROCESS RULE,
OAR 660, DIVISION 4

STATUTORY AUTHORITY

ORS Chapters 197 and 183, particularly ORS 197.040 and 197.732.

STATEMENT OF NEED

Since 1984, there have been four Court of Appeals decisions which have reversed the Commission's acknowledgment of several exception areas. The Court has specifically held that the Commission and local jurisdiction's findings, reasons and supporting evidence have not been adequate to demonstrate that continued farm or forest use within certain exception areas are "impracticable" as required by ORS 197.732(1)(b). Therefore, there is a need to set forth in additional detail conditions which may demonstrate that uses allowed by the applicable goal, usually Goals 3 and 4, are "impracticable."

PRINCIPLE DOCUMENTS RELIED UPON

1. ORS Chapters 197 and 183
2. OAR 660, Division 1, "Procedural Rules including Model Rules of Procedure"
3. OAR 660, Division 4 (Interpretation of Goal 2 Exceptions Process).
4. Memorandum "Proposed Revisions to the Exceptions Process" from Pat Amedeo, Office of the Governor to Senator John Kitzhaber, Chairman and Members of the Senate Committee on Environment and Energy, May 27, 1983.
5. Memorandum "The Exceptions Process" from James F. Ross, Director, Department of Land Conservation and Development, to Pat Amedeo, Governor's Office, February 25, 1983.

FISCAL IMPACT

The implementation of the rule amendments will have minimal fiscal impacts on state agencies and local governments. The amendments will clarify several terms in the exceptions process. This will clarify review standards, shorten the local review process, and avoid costly litigation and time delays.

JFR:sp
5249DRE/135C

AMENDMENTS
(OAR 660-04-028)

Exception Requirements for Lands Irrevocably Committed to Other Uses

660-04-028(1) A local government may adopt an exception to a goal when the land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable.

(a) A "committed exception" is an exception taken in accordance with ORS 197.732(1)(b), Goal 2, Part II(b), and with the provisions of this rule.

(b) For the purposes of this rule, an "exception area" is that area of land for which a "committed exception" is taken.

(c) An "applicable goal," as used in this section, is a statewide planning goal or goal requirement that would apply to the exception area if an exception were not taken.

[(2) Whether land has been irrevocably committed will depend upon the situation at the specific site and the areas adjacent to it. The exact nature and extent of the areas found to be irrevocably committed shall be clearly set forth in the justification for the exception, and those area(s) must be shown on a map or otherwise described and keyed to the appropriate findings of fact. The findings of fact shall address the following factors:]

(2) Whether land is irrevocably committed depends on the relationship between the exception area and the lands adjacent to it. The findings for a committed exception therefore must address the following:

(a) the characteristics of the exception area;

(b) the characteristics of the adjacent lands;

(c) the relationship between the exception area and the lands adjacent to it; and

(d) the other relevant factors set forth in OAR 660-04-028(6).

(3) Whether uses or activities allowed by an applicable goal are impracticable as that term is used in ORS 197.732(1)(b), in Goal 2, Part II(b), and in this rule shall be determined through consideration of

factors set forth in this rule. Compliance with this rule shall constitute compliance with the requirements of Goal 2, Part II. It is the purpose of this rule to permit irrevocably committed exceptions where justified so as to provide flexibility in the application of broad resource-protection goals. It shall not be required that local governments demonstrate that every use allowed by the applicable goal is "impossible."

[(3) A conclusion that land is irrevocably committed to uses not allowed by the applicable goal shall be based on one or more of the factors listed in section (2) of this rule. The conclusion shall be supported by a statement of reasons explaining why the facts support the conclusion that it is impracticable to apply the goal to the particular situation or area.]

(4) A conclusion that an exception area is irrevocably committed shall be supported by findings of fact which address all applicable factors of section (6) of this rule and by a statement of reasons explaining why the facts support the conclusion that uses allowed by the applicable goal are impracticable in the exception area.

[(4) Findings of fact and a statement of reasons that land subject to an exception is physically developed or irrevocably committed need not be prepared or adopted for individual parcels separately. Such units of land may be considered in combination as a single exception area. Lands which are determined to be irrevocably committed under section (2) of this rule can include lands physically developed without the additional findings required by OAR 660-04-025.]

(5) Findings of fact and a statement of reasons that land subject to an exception is irrevocably committed need not be prepared for each individual parcel in the exception area. Lands which are found to be irrevocably committed under this rule may include physically developed lands.

(6) Findings of fact for a committed exception shall address the following factors:

(a) Existing adjacent uses.

(b) Existing public facilities and services (water and sewer lines, etc.);

(c) Parcel size and ownership patterns of the exception area and adjacent lands:

(A) Consideration of parcel size and ownership patterns under subsection (6)(c) of this rule shall include an analysis of how the existing development pattern came about and whether findings against the goals were made at the time of partitioning or subdivision. Past land divisions made without application of the goals do not in themselves demonstrate irrevocable commitment of the exception area. [divided land.] Only if [existing] development (e.g., physical improvements such as roads and underground facilities) on the resulting parcels or other factors make unsuitable [prevent] their resource use or the resource use of nearby lands can the parcels be considered to be irrevocably committed. Resource and nonresource parcels created pursuant to the applicable goals shall not be used to justify a committed exception. For example, the presence of several parcels created for nonfarm dwellings or an intensive commercial agricultural operation under the provisions of an exclusive farm use zone cannot be used to justify a committed exception for land adjoining those parcels.

(B) Existing parcel sizes and [their] contiguous ownerships shall be considered together in relation to the land's actual use. For example, several contiguous undeveloped parcels (including parcels separated only by a road or highway) under one ownership shall be considered [only] as one farm or forest operation. The mere fact that small parcels exist does not in itself [alone] constitute irrevocable commitment. Small parcels in separate ownerships are more likely to be irrevocably committed if the parcels are developed, [or] clustered in a large group or clustered around a road designed to serve these parcels. [as opposed to standing alone or are not adjacent to or are buffered from designated resource land]. Small parcels in separate ownerships are not likely to be irrevocably committed if they stand alone amidst larger farm or forest operations, or are buffered from such operations.

(d) Neighborhood and regional characteristics;

(e) Natural or man-made features [boundaries] or other impediments [buffers] separating the exception area from adjacent resource land[;]. Such features or impediments include but are not limited to roads, watercourses, utility lines, easements, or rights-of-way that effectively impede practicable resource use of all or part of the exception area.

(f) Physical development according to OAR 660-04-025.

(g) Other relevant factors.

(7) The evidence submitted to support any committed exception shall, at a minimum, include a current map, or aerial photograph which shows the exception area and adjoining lands, and any other means needed to convey information about the factors set forth in this rule. For example, a local government may use tables, charts, summaries, or narratives to supplement the maps or photos. The applicable factors set forth in the 660-04-028(6) shall be shown on the map or aerial photograph.

(8) The requirement for a map or aerial photograph in Section (7) of this rule only applies to the following committed exceptions:

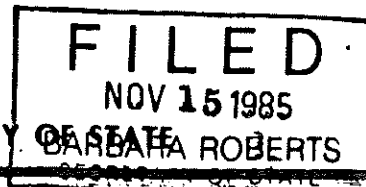
(a) Those adopted or amended as required by a Continuance Order dated after the effective date of OAR 660-04-0-28(7); and

(b) Those adopted or amended after the effective date of OAR 660-04-028(7) by a jurisdiction with an acknowledged comprehensive plan and land use regulations.

NOTE: NEW MATERIAL IS UNDERLINED WHILE DELETED LANGUAGE IS [BRACKETED].

RE/MR:cmv
5152D/50C
R11/01/85

CERTIFICATE AND ORDER
for
FILING ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE



I HEREBY CERTIFY that the attached copy is a true, full and correct copy of rule(s) adopted by the Land Conservation & Development Commission on October 24, 1985 to become effective upon filing.

(Date)

The within matter having come before the Land Conservation & Development Commission after

(Agency)

all procedures having been in the required form and conducted in accordance with applicable statutes and rules and being fully advised in the premises:

Notice of Intended Action published in OAR Bulletin: NO ☐ YES ☒ Date Published: October 1, 1985

NOW THEREFORE, IT IS HEREBY ORDERED THAT the following action be taken:

(List Rule Number(s) or Rule Title(s) on Appropriate Lines Below)

PERM. ☒

or

TEMP: ☐

Adopted:
(New Rules)

OAR 660-03-050

Amended:
(Existing Rules)

Suspended:
(Temporary Only)

Repealed:
(Existing Rules)

RECEIVED

NOV 15 1985

LEGISLATIVE COUNSEL'S
OFFICE

as Administrative Rules of the Land Conservation & Development Commission

(Agency)

DATED this 7th day of November

19 85

By: [Signature]

(Authorized Signer)

Title: Director

Statutory Authority: ORS Chapter 197 and 183, particularly ORS 197.040, 197.251 and 197.650.

Subject Matter: Establishes procedures and timelines for the review of acknowledgment orders remanded or reversed by the Oregon Supreme Court or Court of Appeals.

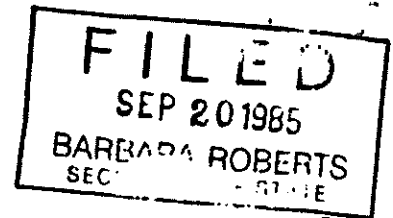
Statement of Need Attached: ☒

Fiscal Impact Attached: ☒

For Further Information Contact: Ronald Eber, Legal Policy Coordinator Phone: 378-5454



AMENDMENTS TO
ACKNOWLEDGMENT REVIEW RULE
OAR 660, DIVISION 4³ *re*



STATUTORY AUTHORITY

ORS Chapters 197 and 183, particularly ORS 197.040, 197.251 and 197.650

STATEMENT OF NEED

Since 1984, there have been at least seven court decisions which have reversed or remanded to the Commission its acknowledgment of compliance for certain plans and land use regulations. The Commission has treated these reviews as it would an initial acknowledgment review and adapted its existing procedures and rules to fit the situation. However, because other acknowledgment and continuance orders are now under review by the Oregon Court of Appeals and Supreme Court, and because these orders may be reversed in whole or in part, there is a need for the Commission to adopt rules to specifically cover such remands.

PRINCIPLE DOCUMENTS RELIED UPON

1. ORS Chapters 197 and 183
2. ORS 660, Division 1, "Procedural Rules including Model Rules of Procedures"
3. OAR 660, Division 3, "Acknowledgment Review Procedures"

FISCAL IMPACT

The implementation of the rule amendments will have no negative fiscal impact on state agencies and local governments. The amendments establish procedures for the Commission's review of acknowledgment orders remanded by the Oregon Court of Appeals or Oregon Supreme Court. This will establish clear procedures for such reviews, clarify who will receive notice of the Commission's review and who may participate. This will expedite the review process, avoid confusion, costly litigation and time delays.

JFR:sp
5757DRE/135C



NEW RULE

Review Upon Remand or Reversal From Oregon Court of Appeals or Oregon Supreme Court

660-03-050 (1) The Commission shall reconsider an acknowledgment request as a result of a remand or reversal from the Oregon Court of Appeals or Oregon Supreme Court within 90 days of the date the decision becomes final. The Director shall review the Court's decision and make written recommendations to the Commission regarding any additional planning work that is required for acknowledgment of compliance with the goals as a result of the Court's decision.

(2) The Director's recommendations shall be sent out at least fourteen (14) days before the Commission's reconsideration of the acknowledgment request subject to the Court's remand or reversal. The Director's recommendations shall be sent to the applicable local government, local coordination body, parties on appeal and those persons who, according to the Department's records, were mailed a copy of the Commission's acknowledgment or continuance order subject to the Court's remand or reversal.

(3) The persons mailed a copy of the Director's recommendations under section (2) of this rule shall have ten (10) calendar days from the date of mailing of the Director's recommendations to file with the Director written exceptions to those recommendations.

(4) The Director may submit a written or oral opinion to the Commission regarding exceptions submitted to the Commission concerning the remand or reversal.

(5) The Commission may allow any person who received a copy of the Director's recommendation under section (1) of this rule or who filed written exceptions within the time period set forth in section (3) of this rule to appear before the Commission to present oral comments on the Director's recommendation or their written exceptions. The Commission shall not allow additional evidence to be presented which was not part of the record of the Commission's initial acknowledgment review subject to the Court's remand or reversal.

(6) The Commission may allow any interested person who was not mailed a copy of the Director's recommendation or did not file a written exception pursuant to sections (1) and (3) of this rule to comment on the Director's recommendation or submitted written exceptions.

(7) Following review of the Director's recommendation and any exceptions, the Commission shall enter a continuance order for those parts of the comprehensive plan or land use regulations for which the court determined that goal compliance had not been demonstrated. The Commission may also enter a limited acknowledgment order for parts of the comprehensive plan and land use regulations not affected by the continuance order.

(8) The Commission's review of corrections made pursuant to an order issued pursuant to OAR 660-03-050(7) will be conducted in accordance with the requirements of OAR 660-03-025 or OAR 660-03-033.

RE:cmv
5688D/135C
R11/01/85